THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, 1st day of August,2007

W.P.Nos.14413 and 16022 of 2001

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Between:-

The Visakhapatnam Dock
Labour Board rep. by its
Deputy Chairman, Visakhapatnam
Dock Labour Board, Karmikha
Jyothi, Port Area,
Visakhaptnam-35. … Petitioner

and

The Chairman and Presiding
Officer, Industrial Tribunal-cum-
Labour Court, Visakhapatnam
and another … Respondents

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COMMON ORDER:

In these two Writ Petitions, the Award dated 16-4-2001 made in I.T.I.D.(C) No.13 of 1999 on the file of Industrial Tribunal-cum-Labour Court, Visakhapatnam is challenged by the Management to the extent of granting 'equal pay for equal work' and by the Union to the extent of denial of benefit of regularization of the services of the workmen.

It appears, Visakhapatnam Dock Labour Board and Dock Workers Union represented by its General Secretary raised a dispute before the Conciliation Officer and on failure of the same, the matter was referred to the Central Government and the Government of India, in turn, referred the matter under Section 10(1)(d) of the Act for adjudication of the following dispute :

> "Whether the action of the Management of Visakhapatnam Dock Labour Board is not regularizing the services of 36 casual workers (as per list enclosed) though they are working since 1992 with Dock Labour Board, Visakhapatnam is justified? If not, to what relief the concerned workmen are entitled to ?"

It was the case of the Union that the Dock Labour Board is running a hospital for the dock workers. Similarly, it has an Engineering unit to meet the technical requirements in getting the works executed and is also running a Junior College for the benefit of the children of its employees. The Management is providing lift facility at its Administrative Office Building. About 36 workmen are working on casual or daily wage basis from 1992, 1993 and 1994 in the four

divisions after being trained in their respective fields. As on the date of filing of I.D., they had completed 7 years of service. Since they have completed 240 days of service, they are entitled for regularization of their services and also pay and other allowances on par with regular employees of the Board. The Management filed its counter before the Labour Court stating that the Management is a statutory body controlled by the Ministry of Surface Transport, Government of India and it is maintaining hospital, lift system in the house of office staff, workers and the Board is also running a junior College at Kailasapuram. But, the allegations that all the 36 workers have been employed on casual basis or daily wage or monthly rate wages in the years 1992, 1993 and 1994 and they were given training and they are being appointed and/or under the direct administration and disciplinary control of the Management and working continuously for more than 240 days in an year and their work is perennial in nature are all false and incorrect. However, it was admitted that 31 casual workers were working on daily rate wages in the organization and remaining employees from serial Nos.32 to 36 are working in Visakhapatnam Dock Labour Board Junior College, which was established in the year 1997, by the Visakhapatnam Dock Labour Board Educational Society in terms of Societies Registration Act and Rules and now they are in the pay scale of Rs.1300-440-1980 with Dearness Allowance, House Rent Allowance, City Compensatory Allowance and other allowances. No training was provided to the workmen. They are working as Sanitary Khalasis, Gardeners, Ward Boys, Khalasis and Lift Operators and they never worked for 240 days in a year and they are only working on daily rate and on casual basis. They are not appointed against permanent vacancies sanctioned by the Government. They are not being trained as per W.R.C.

recommendations, which are applicable to the Port and Dock Board workers. These 31 posts were not covered under the STV report. It is not possible to regularize the services of the workmen, as no such casual workers posts exist. All sanctioned posts are in direct recruitment quota and those vacancies are being filled-up as per recruitment rules by giving paper notification and through employment exchange. The promotions are being given for permanent posts as per their respective recruitment rules. Preference is being given to the sons, wives, unmarried daughters of deceased while in service, medically invalidated workers/employees. These workmen are not sponsored by the employment exchange and were not appointed regularly as per the recruitment procedure in vogue against the sanctioned posts.

Before the Labour Court, on behalf of the workmen-union, W.Ws.1 to 4 were examined and got marked Exs.W1 to W22. Whereas, on behalf of the Management, M.W.1 was examined and got marked Exs.M1 to M5. After considering both oral and documentary evidence, the Labour Court though found that the members of the Union are working regularly and for the last more than 9 years and worked for more than 240 days in a calendar year, refused to grant the relief of regularization on the basis of the decision reported in **G. SUDHAKAR v. LIC OF INDIA**[1]. However, in view of the admissions made by M.W.1 and on the established facts that the workmen have been continuously working for the last more than 9 years on par with regular employees of Dock Labour Board, the wages are to be paid on par with similarly placed employees and thus directed the Management to pay wages on par with similarly placed persons while refusing to regularize the services of the workers.

Learned counsel for the petitioner-Union strenuously contended

that the Labour Court having given a categorical finding that the members of the union are working for the last more than 9 years and found that they have worked for more than 240 days in each calendar year, could not have refused the relief of regularization of the services of the members of the Union merely on the basis of the Judgment in **G.SUDHAKAR**'s case (supra). The judgment relied upon by the Union in **M.V. SUBBA RAO v. DISTRICT SCHEDULED CASTE SERVICE COOPERATIVE SOCIETY LTD., NELLORE AND OTHERS**[2] was totally ignored. Apart from that even during the pendency of the reference and during the pendency of Writ Petition, the services of the workmen are being continued on daily wage basis and this is contrary to the provisions of Sections 25-T and 25-U read with Item-10 of Schedule-V of the Act and amounts to unfair labour practice on the part of the Management. Learned counsel for the petitioner, in this regard, relied upon a Judgment reported in **CHIEF CONSERVATOR OF FORESTS v. JAGANNATH MARUTI KONDHARE**[3]**.** Therefore, the Labour Court was not right in refusing to grant the relief of regularization of services of the members of the Union.

Whereas, learned counsel for the respondent-Management has contended that after the advent of **STATE OF KARNATAKA v. UMADEVI(3)**[4] case, the question of regularization of services of any daily wage employee is not a matter of course. Even paragraph-53 of the said Judgment has no relevance to the facts of this case. She relied upon the Judgment in Civil Appeal No.5185 of 2006, dated 24-11-2006 and stated that **UMADEVI**'s case was further explained and approved in this regard. She has drawn attention of the Court to paragraphs 10,11 and 12, which read as under:

“10. Strong reliance has also been placed by Mr. Mathur upon a Division Bench decision of this Court in Mineral Exploration Corpn. Employees' Union vs. Mineral Exploration Corpn. Ltd. & Anr. [(2006) 6 SCC 310], wherein, this Court, while following the case of Uma Devi & Ors. (supra), invoked paragraph 53 of the said decision to opine : "We, therefore, direct the Tribunal to decide the claim of the workmen of the Union strictly in accordance with and in compliance with all the directions given in the judgment by the Constitution Bench in Secy., State of Karnataka v. Umadevi (3) and in particular, paras 53 and 12 relied on by the learned Senior Counsel appearing for the Union. The Tribunal is directed to dispose of the matter afresh within 9 months from the date of receipt of this judgment without being influenced by any of the observations made by us in this judgment. Both the parties are at liberty to submit and furnish the details in regard to the names of the workmen, nature of the work, pay scales and the wages drawn by them from time to time and the transfers of the workmen made from time to time, from place to place and other necessary and requisite details. The above details shall be submitted within two months from the date of the receipt of this judgment before the Tribunal."

11. The question which, thus, arises for consideration, would be: Is there any distinction between 'irregular appointment' and 'illegal appointment'? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance of the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to. In National Fertilizers Ltd. vs. Somvir Singh [(2006) 5 SCC 493], it has been held : "The contention of the learned counsel appearing on behalf of the respondents that the appointments were irregular and not illegal, cannot be accepted for more than one reason. They were appointed only on the basis of their applications. The Recruitment Rules were not followed. Even the Selection Committee had not been properly constituted. In view of the ban on employment, no recruitment was permissible in law. The reservation policy adopted by the appellant had not been maintained. Even cases of minorities had not been given due consideration. The Constitution Bench thought of directing regularisation of the services only of those employees whose appointments were irregular as explained in State of Mysore v. S.V. Narayanappa, R.N. Nanjundappa v. T. Thimmiah and B.N. Nagarajan v. State of Karnataka wherein this Court observed: [

Umadevi (3) case 1 , SCC p.24, para 16] "16 . In B.N. Nagarajan v. State of Karnataka this Court clearly held that the words 'regular' or 'regularisation' do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments."

Learned counsel further stated that the said Judgment is clarified in S.L.P.No.5065 of 2006, dated 5-12-2006 and has drawn attention of the Court to paragraphs 17,18 and 22, which read as under:

"17. We are, however, not oblivious that another Division Bench of this Court in Mineral Exploration Corpn. Employees' Union vs. Mineral Exploration Corpn. Ltd. & Anr. [(2006) 6 SCC 310], to which our attention has been drawn by Mr. Shrivastava, held : "We, therefore, direct the Tribunal to decide the claim of the workmen of the Union strictly in accordance with and in compliance with all the directions given in the judgment by the Constitution Bench in Secy., State of Karnataka v. Umadevi (3) and in particular, paras 53 and 12 relied on by the learned Senior Counsel appearing for the Union. The Tribunal is directed to dispose of the matter afresh within 9 months from the date of receipt of this judgment without being influenced by any of the observations made by us in this judgment. Both the parties are at liberty to submit and furnish the details in regard to the names of the workmen, nature of the work, pay scales and the wages drawn by them from time to time and the transfers of the workmen made from time to time, from place to place and other necessary and requisite details. The above details shall be submitted within two months from the date of the receipt of this judgment before the Tribunal."

18. The said directions were issued keeping in view the peculiar facts, wherewith we are not concerned. The attention of this Court furthermore was not drawn to the judgment of this Court rendered in R.N. Nanjundappa (supra), State of Mysore & Anr. vs. S.V. Narayanappa [AIR 1967 SC 1071] and B.N. Nagarajan (supra).

22. The judgment of the Division Bench is, thus, subject to correction by this Court both under Article 136 of the Constitution of India as also under Section 19 of the Contempt of Court Act. Recently in R. v. Serumaga [2005 (2) All ELR 160], it was opined : "Section 13 of the 1960 Act provides as follows : '(1) Subject to the provisions of this section, an appeal shall lie under this section from any order or decision of a court in the exercise of jurisdiction to

> punish for contempt of court (including criminal contempt); and in relation to any such order or decision the provisions of this section shall have effect in substitution for any other enactment relating to appeals in civil or criminal proceedings. (2) An appeal under this section shall lie in any case at the instance of the defendant and, in the case of an application for committal or attachment, at the instance of the applicant; and the appeal shall lie ... (bb) from an order or decision of the Crown Court to the Court of Appeal ...(3) The court to which an appeal is brought under this section may reverse or vary the order or decision of the court below; and make such other order as may be just ...' We have considered two interpretations of s 13(1). The narrow interpretation is to the effect that it is not triggered until the contemnor has been convicted of, and sentenced for, the contempt. The broad interpretation is that the language 'any order or decision ... in the exercise of jurisdiction to punish for contempt' is sufficiently wide to relate also to orders or decisions made in the course of proceedings which may result in a conviction of and sentence for contempt. But we have come to the conclusion that the broad interpretation is the correct one. The statutory language permits it. It provides a remedy in a case of unjustifiably prolonged custody, and it does so without impinging on cases where the allegation is of an offence other than contempt of court. Moreover, there are exceptional features which surround summary proceedings for contempt which, as the authorities make clear, demand an enlarged process of judicial scrutiny...."

and submitted that the question of regularizing the services of the members of the Union does not arise. Further, the members of the petitioner-union were not appointed through Employment Exchange or as per the Recruitment Rules of the Organization to satisfy the constitutional requirement and rule of law. They were also not appointed against any regular sanctioned vacancies nor they have completed 10 years of service to apply the principle laid down in paragraph-53 of **UMADEVI**'s case (4 supra). Learned counsel has contended that the Judgment in **UMADEVI**'s case (supra) has also been explained by the Supreme Court in the later decision in **MINERAL EXPLORATION CORPORATION EMPLOYEES' UNION v. MINERAL EXPLORATION CORPORATION LIMITED**[5].

Therefore, looking from any angle, members of the petitioner-union are not entitled for regularization of their services. Therefore, the Award passed by the Labour Court in rejecting the case of the members of the union for regularization does not suffer from any legal infirmity calling for interference of this Court under Article 226 of the Constitution of India.

Insofar as the Writ Petition filed by the Management (W.P.No.14413 of 2001) for equal pay for equal work on par with regular employees is concerned, learned counsel for the Management strenuously contended that neither the reference contemplated as to adjudication of 'equal pay for equal work' nor it was pleaded by the Union in the claim statement filed before the Labour Court. Absolutely, there is no evidence before the Labour Court to come to the conclusion that the members of the union are working on par with regular employees and, therefore, they are entitled for equal pay for equal work. Whereas, learned counsel appearing for the union stated that, in the facts and circumstances of the case, the finding of the Labour Court as to equal pay for equal work is something related to the original dispute referred to the Labour Court and the relief granted was a consequence of such findings reached. Ancillary things also can be discussed and decided by the Labour Court while answering the reference. Therefore, no interference can be made as to the finding recorded by the Labour Court that the members of the Union are entitled for equal pay for equal work.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and gone through the impugned Award and other material made available on record.

In view of the decision rendered by the Apex Court in

UMADEVI's case and subsequent decisions noticed above, I am of the opinion that the members of the petitioner-union are not entitled for regularization of their services automatically, though they have put in more than 240 days of service in a calendar year and completed 9 years of service as on the date of Award or 15 of years as of now nor the Labour Court was right in holding that the members of the petitioner-Union are entitled for equal pay for equal work without there being any evidence to that effect or without there being any claim made by the Union.

Learned counsel for the petitioner has espoused yet another angle of the case to be looked into - as to whether the continuation of the members of the petitioner-union as casual labour for more than 15 years as of now amounts to unfair labour practice or not. Sections 25-T, 25-U and item-10 of Fifth Schedule of the Act, which are relied upon by the learned counsel for the petitioner, in this regard, read as under:

> "**25-T. Prohibition of unfair labour practices:--** No employer or workman or a trade union, whether registered under the Trade Unions Act,1926 or not, shall commit any unfair labour practice.
>
> **25-U. Penalty for committing unfair labour practices:--** Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extent to six months or with fine which may extend to one thousand rupees or both.
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> **THE FIFTH SCHEDULE**
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> **Unfair Labour Practices**
>
> **I—On the part of employers and trade unions of employers.**
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> 1 to 9……
>
> **10.** To employ workmen as 'badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen"

In **JAGANNATH MARUTI KONDHARE**'s case (3 supra), the Supreme Court held as under:

> "18. This takes us to the second main question as to whether

on the facts of the present case could it be held that the appellants were guilty of adopting unfair labour practice. As already pointed out, the respondents alleged the aforesaid act by relying on what has been stated under item 6 of Schedule IV of the State Act which reads as below :

> "To employ employee as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees."

19. The Industrial Court has found the appellants as having taken recourse to unfair labour practice in the present cases because the respondents-workmen who had approached the Court had admittedly been in the employment of the State for 5 to 6 years and in each year had worked for period ranging from 100 to 330 days. Ms. Jaising draws our attention in this context to the statement filed by the appellants themselves before the Industrial Court, a copy of which is at pages 75 to 76 of C.A. No.4375/90. A perusal of the same shows that some of the respondents had worked for a few days only in 1977 and 1978, though subsequently they themselves had worked for longer period, which in case of Gitaji Baban Kadam, whose name is at serial No.4 went upto 322 in 1982, though in 1978 he had worked for 4-1/2 days. (Similar is the position qua some other respondents).

22. We have given our due thought to the aforesaid rival contentions and, according to us, the object of the State Act, inter alia, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case in as much as from the materials on record we are satisfied that the 25 workmen who went to Industrial Court of Pune (and 15 to Industrial Court, Ahmednagar) had been kept as casuals for long years with the primary object of depriving them the status of permanent employees in as much as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object as, it may be remembered that the Pachgaon Rarwati Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment-pollution-care work of Ahmednagar, whose need is on increase because of increase in pollution. Permanency is thus writ large on the face of both the types of work.

If, even in such projects, persons are kept in jobs on casual basis for years the object manifests itself; no scrutiny is required. We, therefore, answer the second question also against the appellants.

28. In so far as the financial strain on State exchequer is concerned, which submission is sought to be buttressed by Shri Dholakia by stating that in the Forests Department itself the casual employees are about 1.4 lacs and if all of them were to be regularised and paid at the rate applicable to permanent workmen, the financial involvement would be in the neighbourhood Rs. 300 crores-a very high figure indeed. We have not felt inclined to bear in mind this contention of Shri Dholakia as the same has been brought out almost from the hat. The argument relating to financial burden is one of despair or in terrorem. We have neither been impressed by the first not frightened by the second in as much as we do not intend that the view to be taken by us in these appeals should apply, proprio vigore, to all casual labourers of the Forests Department or any other Department of the Government.

29. We wish to say further that if Shri Bhandare's submission is taken to its logical end, the justification for paying even minimum wages could wither away, leaving any employer, not to speak of model employer like the State, to exploit unemployed persons. To be fair to Shri Bhandare it may, however, be stated that the learned counsel did not extend his submission of Shri Bhandare to payment of, say fair wages, as distinguished from minimum wages. We have said so, because if a pay scale has been provided for permanent workmen that has been done by the State Government keeping in view its legal obligations and must be one which had been recommended by the State Pay Commission and accepted by the Government. We cannot deny this relief of permanency to the respondent-workmen only because in that case they would be required to be paid wages meant for permanent workers. This right flows automatically from the relief of regularisation to which no objection can reasonably be taken, as already pointed out. We would, however, observe that the relief make available to the respondents is not one which would be available ipso facto to all the casual employees either of the Forests Department or any other Department of the State. Claim of casual employees for permanency or for higher pay shall have to be decided on the merits of their own cases.

Section 25-T of the Act prohibits unfair labour practices and Section 25-U deals with penalty for committing unfair labour practice. Item-10 of Fifth Schedule says, to employ workmen as badlis, casuals

or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen amounts to unfair labour practice. In **JAGANNATH MARUTI KONDHAREB'**s case (3 supra), the Supreme Court held that the Forest Department of State Government is an 'industry'. Further, while examining the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act and the Schedule appended thereto, it was held that from the act of continuation of casuals, for a period ranging from 100 to 300 days in a year and for 5/6 years, it can be inferred that it was with an object to deprive them the status of permanent employees. Further, the burden to establish that object of employer does not lie upon the workmen and the workmen are entitled for regularization of services with all benefits of permanent worker and they cannot be refused regularization on the ground of financial strain of State exchequer.

Of course, learned counsel for the respondent-Management stated that there was no such pleading and there was no such reference. Therefore, this argument cannot be taken into consideration in a Writ Petition like this. Whenever such a dispute is raised by the Union, it is for the appropriate Government to refer such matters to the Labour Court for its adjudication. But it could not be gone into in these proceedings.

May be, what the learned counsel for the respondent-Management says is true. But the fact remains, the question as to whether continuation of the members of the Union for a long period as Badli and casual workers without regularizing their services amounted to unfair labour practice has to be necessarily adjudicated by the Labour Court and also the question whether they are entitled for equal pay for equal work needs to be examined by the Labour Court after

appreciating the evidence led by both the parties. Therefore, I deem it appropriate to set aside the impugned Award passed by the Labour Court in I.T.I.D. No.(C) 13/99. The matter is remanded to the Labour Court for fresh consideration after giving opportunity to both the parties. The Labour Court shall also deal with the matter as to whether the continuation of the members of the Union for more than 15 years as casual labour does not amount to unfair labour practice and whether they are entitled for regularization of services.

Accordingly, these Writ Petitions are allowed and the matter is remanded to the Labour Court. No order as to costs.

01-8-2007

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[1] 1998(6) ALD 527

[2] 2000(6) ALT 587

[3] AIR 1996 SC 2898

[4] 2006(4) SCC 1

[5] 2006(6) SCC 310